

REMARKS/ARGUMENTS

Claims 7-8, 14-16, 19-20 and 28-36 remain pending in the present application, of which claims 1, 15, and 33 are independent. Claims 7 and 33 have been amended herein. Claims 35 and 36 are new. Claim 30 was previously withdrawn due to an earlier restriction requirement. Applicants acknowledge with thanks the allowance of claims 15-16 and 34, and respectfully request reconsideration and allowance of claims 7-8, 14, 19-20, 28-29, and 31-33, as well as consideration and allowance of claims 35 and 36.

I. Interview Summary

A telephone interview was conducted between Examiner Willse and Applicants' attorney Joshua T. Chu on January 21, 2010. During the telephone interview, the parties discussed the 35 U.S.C. § 102(e) rejection of independent claims 7 and 33, and in particular, the Examiner's response to Applicants' previously submitted amendments, on pages 3-4 of the Office action. The Examiner asserted that the terms "angular positions" and "sliding movement," as previously presented in claims 7 and 33, were vague or broad. In response, Applicants' attorney proposed claim amendments to address the Examiner's concerns, and the Examiner indicated that the proposed claim amendments, if incorporated, would help to overcome the 35 U.S.C. § 102(e) rejections. The claim amendments are discussed in further detail below. Applicants' attorney thanks the Examiner once again for his time and consideration.

II. Rejection of Claims Under 35 U.S.C. § 102(e) and 5 U.S.C. § 103(a)

Claims 7, 19-20, 28-29, and 31-33 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,375,682 to Fleischmann et al. ("Fleischmann"). Claims 8 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fleischmann.

In rejecting claims 7 and 33, the Examiner indicated on page 3 of the Office action that:

"the 'angular positions' (e.g., amended claim 7, line 19) are inadequately defined and render the scope to be quite broad. For example, the elongated dimension of the vertebra engaging member (or top plate) 72 as illustrated in Figure 4a defines a continuum of acute and obtuse angles with a central axis of the core during relative rotation (Fleischmann et al.: column 5, lines 1-25) in a tilted configuration (Figure 3). Likewise, 'sliding movement' (e.g., amended claim 7, line 18) is vague or broad in that the vertebral engaging members are

capable (whether or not such was the intended use) of sliding along slippery and/or flaccid external members (as opposed to healthy vertebrae properly engaged) during bending of the bellows (Fleischmann et al.: column 7, lines 46-47) and/or during said relative rotation.” Office action, pp. 3-4.

In response, and as discussed during the January 21, 2010 telephone interview, Applicants have amended independent claim 7 to specify, in relevant part, “wherein the sliding engagements provide for respective rotational movement of the top plate and the base plate substantially about a central axis of the core extending from the upper body to the lower body, and respective sliding movement of the top plate and the base plate with respect to the core from first positions where respective axes of rotation of the top plate and the base plate form first angles with the central axis of the core to second positions where the respective axes of rotation of the top plate and the base plate form second angles with the central axis of the core.” (emphasis added). Independent claim 33 has been amended in a similar manner.

Similarly as discussed during the telephone interview, claims 7 and 33 have first been amended to specify, “respective sliding movement of the top plate and the base plate with respect to the core,” to distinguish over the Examiner’s above interpretation of “sliding movement.”

Further, claims 7 and 33 have been amended to remove the term “angular positions.” Instead, Applicants now define first positions “where respective axes of rotation of the top plate and the base plate form first angles with the central axis of the core,” and second positions “where the respective axes of rotation of the top plate and the base plate form second angles with the central axis of the core.” As agreed upon during the telephone interview, these amendments help to distinguish over the Examiner’s above interpretation of “angular positions” by more explicitly defining respective movement of the top plate and base plate with respect to the core. Applicants further note that the additional limitation, “the respective second angles and the corresponding first angles having different sizes,” in the proposed claim 7 presented to the Examiner during the telephone interview, has instead been incorporated in new dependent claims 35 and 36, as this additional limitation was indicated as optional in the interview agenda, and pursuant to further discussions during the telephone interview.

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Therefore, for these reasons, and based on the discussion with the Examiner, Applicants submit that Fleischmann does not disclose the above specified limitations of amended claim 7, and the similarly specified limitations of amended claim 33, and as such, that a 35 U.S.C. § 102(e) rejection of these claims over Fleischmann is not proper. Accordingly, Applicants request that the rejection of claims 7 and 33 be withdrawn, and that claims 7 and 33 be allowed.

Claims 8, 14, 19-20, 28-29, and 31-32 depend, directly or indirectly, from claim 7, and each incorporates all the terms and limitations of claim 7, in addition to other limitations, which together further patentably distinguish them over Fleischmann. Furthermore, while claims 8 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fleischmann, there is also no apparent reason why one skilled in the art at the time the invention was made would have modified the teachings of Fleischmann to arrive at the claimed embodiment of amended claim 7. Accordingly, Applicants request that the rejections of claims 8, 14, 19-20, 28-29, and 31-32 be withdrawn, and that these claims be allowed. Applicants also request that new claims 35 and 36, which respectively depend from claims 7 and 33, be considered and allowed as well.

III. Concluding Remarks

In view of the foregoing remarks and arguments, Applicant earnestly solicits a timely issuance of a Notice of Allowance as pertains to all of claims 7, 8, 14-16, 19-20, 28-29, and 31-36. If there are any remaining issues that can be addressed over the telephone, the Examiner is cordially invited to call Applicants' attorney at the number listed below.

Respectfully submitted,
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